

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

MARY BETH HARSHBARGER,	:	CIVIL ACTION
	:	
PETITIONER	:	NO.: 3:09-CV-00487
	:	
VS.	:	
	:	
MICHAEL R. REGAN, UNITED STATES	:	JUDGE VANASKIE
MARSHALL FOR THE MIDDLE DISTRICT OF	:	
PENNSYLVANIA; ERIC HOLDER,	:	
ATTORNEY GENERAL OF THE UNITED	:	
STATES; SUSAN TORRES, ATTORNEY-	:	
ADVISOR, OFFICE OF THE LEGAL	:	
ADVISOR, UNITED STATES DEPARTMENT	:	
OF STATE; HILLARY RODHAM CLINTON,	:	
SECRETARY OF STATE OF THE UNITED	:	
STATES,	:	
RESPONDENTS	:	

EMERGENCY MOTION FOR CERTIFICATE OF APPEALABILITY

AND NOW, comes the Petitioner, Mary Beth Harshbarger, by and through her counsel, PAUL P. ACKOUREY, ESQUIRE, and respectfully moves this Honorable Court to issue a Certificate of Appealability in the above-captioned case, as it is her intention to appeal the denial of her habeas corpus petition filed under 28 U.S.C. §2241 to the United States Court of Appeals for the Third Circuit. In support thereof, it is averred as follows:

1. On March 16, 2009, Ms. Harshbarger filed an Emergency Petition for Writ of Habeas Corpus, which, alleging a denial of her constitutional rights under the Due Process Clause and Equal Protection Clause embodied in the Fifth and Fourteenth

Amendments to the United States Constitution, sought review of the extradition proceedings conducted by the extradition magistrate in her case and the extradition order that was ultimately issued as a result of those proceedings.

2. A hearing was held on the aforementioned habeas corpus petition on March 25, 2009, and, on April 13, 2009, this Court issued a Memorandum and Order denying habeas corpus relief.

3. The underlying issues in this matter are serious and substantial in nature. One of the issues, whether hearsay evidence alone is sufficient to support a probable cause determination at an extradition hearing, has led to a split of judicial opinion in the Middle District of Pennsylvania between the Court's opinion in the instant matter and that of Judge John E. Jones in In re United States Extradition of Sylvester, No.: 4:CR 05-0490, Dkt. Entry 10 (M.D. Pa. Feb. 14, 2006). The issue entails reconciling Article 10(a) and Article 8 of the U.S. - Canada extradition treaty as well as the statutory language of 18 U.S.C. §3184 and 18 U.S.C. §3190, those articles and statutes being susceptible to opposing interpretations.

4. Additionally, the petition and anticipated appeal questions whether the hearsay evidence, in any event, was sufficient to support probable cause and whether the criminal offense upon which her extradition is based is unconstitutionally vague. In resolving these issues, the fact that the fatal shot was fired within the time period allowed by Canadian hunting regulations, among other facts, makes the probable cause finding a complex and difficult determination.

5. The need for clarity in both international treaty law and criminal law, it is submitted makes the appeal an important matter impacting on the interests of justice

and the public interest, and making it worthy of a certificate of appealability. Third Circuit

review could provide the clarification that is needed here.

6. Accordingly, petitioner Mary Beth Harshbarger requests that this court issue

a certificate of appealability in her case. She does so on an emergency basis given the fact that the clock has been running on the Certificate of Extraditability now in place since

March 27, 2009, pursuant to this Court's order.

WHEREFORE, petitioner Mary Beth Harshbarger moves this Honorable Court to issue a Certificate of Appealability in the above-captioned case for the purpose of her appealing the denial of her habeas corpus petition to the United States Court of Appeals for the Third Circuit.

RESPECTFULLY SUBMITTED:

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